

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

RICKY UPCHURCH, as Executor of the
Estate of JUANITA UPCHURCH, for the
Use and benefit of the Next of Kin,
CLAYTON UPCHURCH,

Plaintiff,

v.

NATIONAL RIFE ASSOCIATION and LIFE
INSURANCE COMPANY OF NORTH
AMERICA,

Defendants.

NO. 2:19-CV-00149-DCLC

MEMORANDUM OPINION AND ORDER

This matter is before the Court pursuant to the Court's earlier order in this case, dated October 6, 2020 [Doc. 44]. At that time, and upon consideration of Defendants' Motion to Dismiss [Doc. 36], as well as Plaintiff's Motion in Opposition [Doc. 39], the Court ruled that Defendants' Motion to Dismiss was denied in part and granted in part [Doc. 44].

The Court denied Defendants' Motion to Dismiss with regard to all but one claim, which involved an allegation by the Plaintiff that Defendants violated the Tennessee Consumer Protection Act ("TCPA") [Doc. 44, pg. 9-10]. To this end, the Court ordered Plaintiff "to address whether, considering Tenn. Code. Ann. § 56-8-113, he may proceed with a claim under the TCPA against Defendants." *Id.* at 10. More specifically, "it appears that Plaintiff is pursuing a claim under the TCPA that has been preempted by Tenn. Code Ann. § 56-8-113." *Id.* at 9. The Court provided that Plaintiff would have until October 19, 2020 to provide his response. *Id.* at 10.

The time for Plaintiff's response has come and gone, and Plaintiff has failed to provide a basis on which his TCPA allegation could be viable. As this Court's October 6, 2020 order noted, failure to respond by the October 19, 2020 deadline would result in a dismissal of the TCPA claim. *Id.* ("Plaintiff shall file a response by October 19, 2020 or else his claim under the TCPA will be dismissed for failure to state a claim upon which relief can be granted."). Accordingly, and as per the clear terms of this Court's October 6, 2020 order, Plaintiff's TCPA claim is **DISMISSED WITH PREJUDICE**.

SO ORDERED:

s/Clifton L. Corker
United States District Judge